

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK D. SIMS,

No. C 08-1691 SBA (PR)

Plaintiff,

**ORDER DENYING PLAINTIFF'S 56(f)
MOTION AS MOOT**

v.

(Docket no. 66)

MICHAEL C. SAYRE, et al.,

Defendants.

On October 4, 2010, Defendants filed a motion for summary judgment. Plaintiff's opposition is due on December 6, 2010.

In an Order dated November 1, 2010, the Court denied Plaintiff's motion to compel discovery after construing it as a request for a continuance for discovery pursuant to Rule 56 of the Federal Rules of Civil Procedure.¹ The Court also denied Plaintiff's motion for sanctions.

Before the Court is Plaintiff's "Motion for Continuance to File Opposition to Defendants' Motion for Summary Judgment [sic]." In that motion, Plaintiff requests for a continuance under Rule 56(f), and he alleges that "Defendants failed to comply with [his] requests for production of documents, and admissions as well as interrogatories necessary to complete [his] opposition to summary judgment [sic] in this matter." (Pl.'s Mot. at 1.)

In its November 1, 2010 Order, the Court found that a continuance under Rule 56(f) was not warranted stating:

As the Ninth Circuit stated in Continental Maritime v. Pacific Coast Metal Trades, 817 F.2d 1391, 1395 (9th Cir. 1987), under Rule 56(f) "the party seeking a continuance bears the burden to show what specific facts it hopes to discover that will raise an issue of material fact." Id. Plaintiff has not met this burden. The requested documents are sought without explanation of what specific, material facts these documents will likely disclose. Plaintiff does not explain in his motion to

¹ Rule 56(f), entitled "When Affidavits are Unavailable," states:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f).

1 compel what specific facts he hopes to discover that will raise an issue of material
2 fact. Plaintiff fails to demonstrate how "additional discovery would have revealed
3 specific facts precluding summary judgment." See Tatum v. City and County of
4 S.F., 441 F.3d 1090, 1101 (9th Cir. 2006). In addition, Defendants claim they have
responded to Plaintiff's discovery requests. Thus, Plaintiff has not met his burden
under Rule 56(f). Therefore, the Court DENIES Plaintiff's request for a
continuance for discovery pursuant to Rule 56.

5 (Nov. 1, 2010 Order at 3.)

6 Plaintiff's newly-filed 56(f) motion is identical to his previously-filed motion to compel,
7 which had been construed as a 56(f) motion. Because the Court has already denied Plaintiff's
8 previously-filed 56(f) motion, the present 56(f) motion (docket no. 66) is DENIED as moot.

9 This Order terminates Docket no. 66.

10 IT IS SO ORDERED.

11 DATED: 11/9/10

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13 SAUNDRA BROWN ARMSTRONG
14 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DERRICK SIMS,

5 Plaintiff,

6 v.

7 MICHAEL SAYRE et al,

8 Defendant.

Case Number: CV08-01691 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on November 10, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Derrick D. Sims J-20913
16 Pelican Bay State Prison
17 5905 Lake Earl Drive
18 P.O. Box 7500
19 Crescent City, CA 95531

20 Dated: November 10, 2010

21 Richard W. Wieking, Clerk
22 By: LISA R CLARK, Deputy Clerk
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